Kirtland Trucking Company, Inc. *and* **John M. Witt and Margaret Adkins.** Cases 8-CA-14546 and 8-CA-14546-2

June 30, 1982

DECISION AND ORDER

CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

Upon charges filed on January 16 and 21, 1981, by John M. Witt, an individual, and Margaret Adkins, an individual, and duly served on Kirtland Trucking Company, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 8, issued an amended consolidated complaint on March 20, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charges and amended consolidated complaint and notice of consolidated hearing before an administrative law judge were duly served on the parties to this proceeding.

On April 21, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on April 26, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and the averments of the Motion for Summary Judgment and of the attached supporting exhibits and certifications stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The consolidated complaint and the notice of consolidated hearing served on Respondent specifically state that unless an answer to the complaint is filed by Respondent within 10 days of service thereof "all of the allegations in the Amended Consolidated Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, according to Exhibit E submitted by counsel for the General Counsel, on or about March 24, 1982, he mailed by certified mail, the return receipt of which is attached to Exhibit E, a letter notifying Respondent of its failure to file an answer and requesting that it file an answer by April 1, 1982. Counsel for the General Counsel further avers that George Chormann, president of Respondent, was informed by telephone of the requirement to file an answer on March 24, 1982. No answer was received from Respondent on April 1, 1982, or by April 19, 1982, the date of the Motion for Summary Judgment. No good cause for failure to file an anser having been shown, in accordance with the rule set forth above, the allegations of the amended consolidated complaint are deemed to be admitted to be true. We, accordingly, find as true all allegations of the complaint and grant the Motion for Summary Judgment. On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is an Ohio corporation with its principal office and place of business located in Kirtland, Ohio, where it is engaged in the transportation of sand, gravel, and flash. Annually, in the course and conduct of its business, Respondent performs freight hauling services for Mahoning Leasing Service, Inc., a wholly owned subsidiary of Leaseway Transportation Corp., from which services it derives revenues in excess of $50,000. Annually, during the course and conduct of its business, Leaseway Transportation Corp., who itself is an interstate commerce, transports freight in interstate commerce, for which it receives gross revenues in excess of $500,000.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and

that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 436, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

1. Respondent, at its facility, through its officers, agents, and supervisors, on or about the dates set forth opposite their names, threatened its employees with plant closure if they engaged in and/or continued to engage in union activities.

Rick Radcliffe	December 29, 1980
George Chormann	January 5, 1981

2. Respondent, at its facility, through its officers, agents, and supervisors, more particularly Rick Radcliffe, on or about December 29, 1980, and again on or about January 5 and 6, 1981, threatened employees with discharge if they engaged in union and/or other protected concerted activities.

3. Respondent, at its facility, through its officers, agents, and supervisors, on or about the dates set forth opposite their names, interrogated its employees as to their union and/or protected concerted activities.

Rick Radcliffe	January 5, 1981
George Chormann	January 5, 1981

4. Respondent, through its representative, supervisor, and agent, more particularly George Chormann, on or about January 5, 1981, offered its employees a promise of benefits, including a wage increase, if they refrained from engaging in union and/or protected concerted activities.

5. On or about January 6, 1981, Respondent discharged John M. Witt and at all times since such date has failed and refused, and continues to fail and refuse, to reinstate him to his former or substantially equivalent position of employment, for the reasons that Witt had, or Respondent believed he had, joined, supported, assisted, or favored a union, or engaged in other protected concerted activities for the purpose of collective bargaining or other mutual aid or protection.

6. On or about January 19, 1981, Respondent discharged Margaret Adkins and at all times since such date has failed and refused, and continues to fail and refuse, to reinstate her to her former or substantially equivalent position of employment, for the reasons that Adkins had, or Respondent believed she had, joined, supported, assisted, or favored a union, or engaged in other protected concerted activities for the purpose of collective bargaining or other mutual aid or protection.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Respondent shall be ordered to offer John M. Witt and Margaret Adkins immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. Respondent shall also make John M. Witt and Margaret Adkins whole for any loss of earnings they may have suffered due to the discrimination practiced against them by paying each of them a sum equal to what they would have earned, less any net interim earnings, plus interest, *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest computed in accordance with *Florida Steel Corporation*, 231 NLRB 651 (1977).[1]

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Kirtland Trucking Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 436, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening its employees with plant closure if they engaged in and/or continued to engage in union activities, Respondent violated Section 8(a)(1) of the Act.

4. By threatening its employees with discharge if they engaged in union and/or other protected con-

[1] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

certed activities, Respondent violated Section 8(a)(1) of the Act.

5. By interrogating employees as to their union and/or protected concerted activities, Respondent violated Section 8(a)(1) of the Act.

6. By offering its employees promises of benefits if they refrained from engaging in union and/or protected concerted activities, Respondent violated Section 8(a)(1) of the Act.

7. By discharging John M. Witt because he had, or Respondent believed he had, joined, supported, assisted, or favored a union or engaged in other protected concerted activities for the purpose of collective bargaining or other mutual aid or protection, Respondent violated Section 8(a)(3) and (1) of the Act.

8. By discharging Margaret Adkins because she had, or Respondent believed she had, joined, supported, assisted, or favored a union or engaged in other protected concerted activities for the purpose of collective bargaining or other mutual aid or protection, Respondent violated Section 8(a)(3) and (1) of the Act.

9. By the aforesaid improper and unlawful acts, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and hereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

10. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Kirtland Trucking Company, Inc., Kirtland, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening its employees with plant closure if they engaged in and/or continue to engage in union activities.

(b) Threatening its employees with discharge if they engage in union and/or other protected concerted activities.

(c) Discharging employees because they had, or Respondent believed they had, joined, supported, assisted, or favored a union, or engaged in other protected concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(d) Interrogating employees as to their union and/or protected concerted activities.

(e) Promising its emloyees benefits, including a wage increase, if they refrain from engaging in union and/or protected concerted activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer John M. Witt and Margaret Adkins immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Expunge from Respondent's personnel records any references to the discriminatory termination of employment of John M. Witt and Margaret Adkins.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records,social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Kirtland, Ohio, offices copies of the attached notice marked "Appendix."[2] Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT threaten our employees with plant closure if they engaged in and/or continue to engage in union activities.

WE WILL NOT threaten our employees with discharge if they engage in union and/or other protected concerted activities.

WE WILL NOT discharge employees because they have, or we believe that they have, joined, supported, assisted, or favored a union, or engaged in other protected concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT interrogate employees as to their union and/or protected concerted activities.

WE WILL NOT promise our employees benefits, including a wage increase, if they refrain from engaging in union and/or protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their Section 7 rights.

WE WILL expunge from our personnel records any references to the discriminatory termination of employment of John M. Witt and Margaret Adkins.

WE WILL offer John M. Witt and Margaret Adkins immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings they may have suffered due to the discrimination practiced against them, with interest.

KIRTLAND TRUCKING COMPANY, INC.